Supreme Court, U.S.
FILED
JAN 3 1983
ALEXANDER L. STEVAS
CLERK

No. 82-801

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

HARKINS AND COMPANY, *et al.*,
Petitioners,

v.

JAMES W. ELLIOTT, JR., *et al.*,
Respondents.

PETITIONERS' REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

WILLIAM F. COCKRELL, JR.
Counsel of Record

MICHAEL G. KUSHNICK
ROSE, SCHMIDT, DIXON & HASLEY
1575 EYE STREET, N.W.
WASHINGTON, D.C. 20005
(202) 289-8300

EDMUND L. BRUNINI, JR.
JOHN E. MILNER
BRUNINI, GRANTHAM, GROWER & HEWES
1400 First National Bank Bldg.
P.O. Drawer 119
Jackson, Mississippi 39205

KENNETH I. FRANKS
GLENN GATES TAYLOR
HARRY E. NEBLETT, JR.
HEIDELBERG, WOODLIFF & FRANKS
Suite 1030, Capital Towers
Jackson, Mississippi 39201

Counsel for Petitioners

R. FRED HOSEY
HARKINS AND COMPANY
P.O. Box 1940
Alice, Texas 78332
Of Counsel

TABLE OF CONTENTS

		Page
I.	THE FEDERAL QUESTIONS PRESENTED WERE ADEQUATELY RAISED AT THE APPROPRIATE TIME IN THE PROCEEDINGS BELOW	1
	A. Harkins Raised The Federal Questions In A Timely Manner	2
	B. Harkins Raised The Federal Questions In An Adequate Manner	4
II.	ELLIOTT HAS MISCONSTRUED AND DISTORTED HARKINS' CONTENTION THAT THE DUE PROCESS CLAUSE REQUIRED THE MISSISSIPPI COURT SYSTEM TO ISSUE A WRITTEN DECISION ADDRESSING HARKINS' JUDICIAL BIAS CLAIM	7
III.	ELLIOTT HAS DISTORTED CERTAIN OF HARKINS' JUDICIAL BIAS ARGUMENTS WHILE FAILING TO CONTRADICT OTHER OF THOSE ARGUMENTS	8
IV.	ELLIOTT HAS GROSSLY DISTORTED HARKINS' ASSERTION THAT THE DECISION AT ISSUE IS SO ERRONEOUS AS TO CONSTITUTE ARBITRARY AND CAPRICIOUS ACTION	9
APPENDIX		1a

TABLE OF AUTHORITIES

	Page
CASES	
American Railway Exp. Co. v. Kentucky, 273 U.S. 269 (1927)	10
Anders v. California, 386 U.S. 738 (1967)	7
Bessler Movable Stairway Co. v. Bank of Leakesville, 140 Miss. 537, 106 So. 445 (1926)	2
Black v. Washington, 65 Miss. 60, 3 So. 140 (1887)	2
Bryant v. Zimmerman, 278 U.S. 63 (1928)	2,4,6
Colson v. Sims, 220 So.2d 345 (Miss. 1969)	3
Connor v. Finch, 431 U.S. 407 (1977)	6
Crooker v. Hollingsworth, 210 Miss. 636, 46 So.2d 541 (1950)	9
Estate of Briscoe v. Briscoe, 255 So.2d 313 (Miss. 1971)	2
Mathews v. Eldridge, 424 U.S. 319 (1976)	7
McLaurin v. Royalties, Inc., 231 Miss. 240, 95 So.2d 105 (1957)	9
Prune Yard Shopping Center v. Robins, 447 U.S. 74 (1980)	2-4,6
Roberts v. Bailar, 625 F.2d 125 (6th Cir. 1980)	8
Saunders v. Shaw, 244 U.S. 317 (1917)	3
Silber v. United States, 370 U.S. 717 (1962)	6
Sumner v. Mata, 449 U.S. 539 (1981)	7
Tracy v. Ginzberg, 205 U.S. 170 (1907)	10
United States v. Grinnell Corp., 384 U.S. 563 (1966)	8
Watson v. Kenlick Coal Co., 498 F.2d 1183 (6th Cir. 1974), *cert. denied* 422 U.S. 1012 (1975)	10
Wisdom v. Stegall, 219 Miss. 776, 70 So.2d 43 (1954)	4
Wood v. Strickland, 420 U.S. 308 (1975)	7
PROCEEDINGS BELOW	
Harkins and Company, et al. v. Elliott, et al., No. 53,095 (Miss. Sup. Ct., Mar. 17, 1982), *reh'g denied*, June 30, 1982	*Passim*

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-801

HARKINS AND COMPANY, *et al.*,
Petitioners,

v.

JAMES W. ELLIOTT, JR., *et al.*,
Respondents.

PETITIONERS' REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

Petitioners Harkins and Company, *et al.*, ("Harkins") hereby submit the following Reply to the Brief in Opposition filed by Respondents James W. Elliott, Jr., *et al.*, ("Elliott"):

I. THE FEDERAL QUESTIONS PRESENTED WERE ADEQUATELY RAISED AT THE APPROPRIATE TIME IN THE PROCEEDINGS BELOW.

This Court has consistently held that in order to properly raise a federal question:

> [n]o particular form of words or phrases is essential, but only that the claim of invalidity and the ground therefore be brought to the attention of the state court with fair precision and in due time. And if the record as a whole shows either expressly or by clear intendment that this was done, the claim is to be regarded as having been adequately presented.

Bryant v. Zimmerman, 278 U.S. 63, 67 (1928) *quoted in Prune Yard Shopping Center v. Robins*, 447 U.S. 74, 85, n.9 (1980). *Bryant* establishes two key criteria to apply in determining whether a federal question has been properly raised: timeliness and manner of raising.

Elliott has improperly characterized the facts of this case bearing on the timeliness and manner in which Harkins raised the federal questions presented.

A. Harkins Raised The Federal Questions In A Timely Manner.

The first federal question presented is based on remarks by the trial judge ("Statement of Bias") which constituted personal opinions regarding the grantor of a deed (who was a party before the court), the construction of which deed formed the basis of the lawsuit, and of the grantee of that deed, the predecessor-in-interest of another party—opinions based exclusively on extrajudicial sources—opinions crucially relevant to the intentions of the deed's grantor and grantee as to the scope of property which was in fact being conveyed.

Despite the impression conveyed in Elliott's brief (Brief in Opposition at 3, 5), the Statement of Bias was not made at a break or a recess, but was made only *moments before* the trial judge issued his decision in the case. *See* the affidavit of trial counsel for Harkins, attached as Appendix A. Consequently, Harkins had no opportunity to object to the Statement of Bias or to move the trial judge to recuse himself prior to his decision in the case, and the Mississippi cases cited by Elliott (Brief in Opposition, *supra* at 3)[1] to support its contention that Harkins failed to follow proper procedures are not on point.

---

[1] Bessler Movable Stairway Co. v. Bank of Leakesville, 140 Miss. 537, 106 So. 445 (1926), states that objections to evidence must be specific, not general (Harkins' objection to the Statement of Bias was most specifically made); Black v. Washington, 65 Miss. 60, 3 So. 140 (1887) states that an objection must be raised to the trial court (Harkins did so by filing its Bill of Exceptions); Estate of Briscoe v. Briscoe, 255 So. 2d 313 (Miss. 1971) states that allegations of error in a jury trial must be properly raised if they are to be considered on appeal (Harkins properly raised its objection to the Statement of Bias).

This Court addressed an analogous situation in *Saunders v. Shaw*, 244 U.S. 317, 320 (1917) and concluded that "when the act complained of is the act of the . . . court, done unexpectedly at the end of the proceeding, . . . it would leave a serious gap in the remedy for infraction of constitutional rights if the party aggrieved in such a way" could not appeal. *See also PruneYard, supra* at 85, n. 9 (1980).

Harkins promptly (within ten days of the trial judge's decision in the case) presented the trial judge with a Bill of Exceptions which noted for the record the Statement of Bias. How can Elliott fairly expect Harkins to have asserted more quickly its objection to the Statement of Bias?

Elliott contends that Harkins should have made a post-hearing motion, presumably for a new trial. However, under Mississippi law in effect at the time, it was not necessary for Harkins to file a motion for new trial. *See Colson v. Sims*, 220 So.2d 345 (Miss. 1969). That Harkins followed proper procedures is evidenced by the fact that the Mississippi Supreme Court accepted as properly made Harkins' appeal from the trial court's decision.

The second federal question presented, whether the Mississippi Supreme Court erred in failing to address, in a written opinion, Harkins' claim that the Statement of Bias was improper, could not possibly have been raised until the Mississippi Supreme Court issued its decision in the case. At that time, Harkins raised that objection by objecting both to the Mississippi Supreme Court's failure to issue a written decision (Brief In Support of Appellants' Petition for Rehearing at 2, *Harkins and Company, et al. v. Elliott, et al.*, No. 53,095 (Miss. Sup. Ct., Mar. 17, 1982), *reh'g denied*, June 30, 1982 ("Brief in Support of Rehearing")) and to the Statement of Bias by the trial judge (*id.* at 11-12).

With respect to the third federal question presented, whether arbitrary and capricious action violating due process had been taken by the Mississippi court system, it was not possible for Harkins fairly to assert that such arbitrary and capricious action had been taken until the Mississippi Supreme Court had elected not to issue a written explanation of the abrupt departure from controlling state precedent for the

construction of deeds. Harkins made such a timely assertion of the arbitrary and capricious action argument in its Brief In Support of Rehearing.

B. Harkins Raised The Federal Questions In An Adequate Manner.

Not only did Harkins timely raise those federal questions, but also it presented them in a manner adequate to satisfy the requirements of this Court. Harkins clearly presented the federal question, whether the trial judge had demonstrated improper bias, in its appeal to the Mississippi Supreme Court, by stating that:

(i) "The Lower Court erred in considering facts known to and personal opinions held by the Chancellor and which were not in evidence," Assignments of Error at 1, *Harkins, supra,* and

(ii) the trial judge "*injected* his *own personal knowledge and opinions* that were not in evidence as a *primary* source of his" conclusions of law, Appellants' Rebuttal Brief at 4-5, *Harkins, supra* (emphasis contained in the original).

Although Harkins did not use *directly* constitutional "buzz words" in making its improper bias argument, it nevertheless clearly stated the gravamen of its constitutional claim. Furthermore, consistent with this Court's holding in *Bryant,* affirmed in *Prune Yard,* that "if the record as a whole shows . . . clear intendment" the "claim of invalidity," then "the claim is to be regarded as having been adequately presented," 278 U.S. at 67, Harkins conveyed its "clear intendment" that the due process clause of the federal constitution constituted the legal basis underlying its contention. Harkins did so, *e.g.,* by (i) relying on a primary case, *Wisdom v. Stegall,* 219 Miss. 776, 70 So.2d 43, 45 (1954), which cited "constitutional right" and "procedural due process" as the legal doctrinal basis for its holding[2] and (ii)

[2] Although the *Stegall* court's opinion cited violations of "procedural due process" and "constitutional right" specifically with reference to the trial judge's refusal to allow the appellants full opportunity to interrogate witnesses to a survey, the making of which formed the basis of the trial judge's impermissible "personal knowledge," it is nevertheless implicitly clear that the court considered the trial judge's consideration of "personal knowledge" to violate "procedural due process" and "constitutional right."

indicating no other legal doctrinal basis for its assertion that the trial judge acted improperly in basing his decision on his personal opinions.[3]

Also, Harkins objected in an adequate manner to the Mississippi Supreme Court's unanticipated failure to issue a written determination. In its Brief In Support of Rehearing, Harkins objected strenuously to the failure to issue a written determination (*id.* at 2) and to the Statement of Bias by the trial judge (*id.* at 11-12).

Similarly, Harkins objected in an adequate manner to the arbitrary and capricious nature of the Mississippi court system's rejection, without explanation, of long standing principles of deed construction consistently applied in Mississippi cases, in circumstances involving judicial bias. When the elements of the claim of arbitrary and capricious action were complete, Harkins stated (in essence) that the decision in the case was arbitrary and capricious, not merely erroneous, as follows:

> The seriousness of the panel's mistake and error in rendering its decision cannot be over-emphasized. With all due respect, either the panel did not appreciate the nature and importance of the after-acquired title doctrine issue involved or it consciously ignored and rejected this Court's body of decisions regarding the interpretation and construction of land conveyance instruments. We actually have no way of knowing how the panel reached its disastrous conclusion since *it issued no written opinion to explain its reasoning.* We respectfully submit that the lower court's decision cannot be affirmed by written opinion without effectively overruling the established decisions of this Court on the construction of deeds.
>
> The need for a written opinion in this case cannot be overstated. At issue are (1) the continued viability of the doctrine of after-acquired title in this State, and (2) the validity of the substantive rules of

[3] Contrary to Elliott's assertion (*see* Brief in Opposition, *supra* at 13), Harkins did not state that the legal principle violated by the trial judge's Statement of Bias was a state evidentiary rule of law.

> construction which this Court and the title lawyers of this State—particularly the oil and gas bar—are to follow in construing land instruments and in determining the ownership of hundreds of millions of dollars in oil and gas production. Has the doctrine of after-acquired title been discarded? The action of the panel leaves us agasp. Have the rules of construction which this Court has followed for almost a hundred years suddenly been changed? Are the rules to be ignored? What are the rules now? We do not know the answers to these questions because we have no written opinion. The title lawyers of this state need to know what the law in this area is, and this case is a "textbook case" for decision by written opinion.

Brief In Support of Rehearing, *supra* at 2 (emphasis contained in the original).

It may be concluded, then, that Elliott is incorrect in distinguishing *Bryant* and *Prune Yard* (Brief In Opposition, *supra* at 3); in the facts presented, as was true in those cases, "there was some showing that the state courts were at least notified that constitutional rights were claimed to be at issue."

Even if, *arguendo,* Harkins did not explicitly raise below the federal questions presented here, it nevertheless would be appropriate for the Court to consider those questions under the "plain error doctrine." This Court has stated that in exceptional circumstances "appellate courts, in the public interest, may, of their own motion, notice errors to which no exception has been taken, if the errors are obvious, or if they otherwise seriously affect the fairness, integrity or public reputation of judicial proceedings." *Silber v. United States,* 370 U.S. 717, 718 (1962). Applying that policy to the facts presented, it should be noted that the "fairness, integrity or public reputation of judicial proceedings" is certainly affected here where substantial allegations of judicial bias and arbitrary and capricious action by an entire court system have been made.

Furthermore, the Court has indicated a greater willingness to apply the plain error doctrine where the raising of federal questions below was at least implied. *See Connor v. Finch,* 431

U.S. 407, 421, n. 19 (1977). Certainly, it must be concluded that in the facts presented Harkins at least implied the raising of the federal questions presented.

II. ELLIOTT HAS MISCONSTRUED AND DISTORTED HARKINS' CONTENTION THAT THE DUE PROCESS CLAUSE REQUIRED THE MISSISSIPPI COURT SYSTEM TO ISSUE A WRITTEN DECISION ADDRESSING HARKINS' JUDICIAL BIAS CLAIM.

The sum and substance of Harkins' contentions with respect to the failure of the Mississippi court system to issue a written opinion addressing Harkins' judicial bias claim is as follows: (i) if a non-frivolous Constitutional claim is raised, *a court, some court,* must issue a written determination responding to that claim. (*See* Petition for a Writ of Certiorari at 5 ("Petition"); *Sumner v. Mata,* 449 U.S. 539 (1981); *Wood v. Strickland,* 420 U.S. 308 (1975); and *Anders v. California,* 386 U.S. 738 (1967)); (ii) although this Court has not *yet* explicitly stated that the failure of a court system to issue such a written determination responding to such a claim constitutes a denial of due process, "nevertheless such a statement would be entirely consistent with the statements which the Court has made," Petition, *supra* at 8-9, and this Court's "precedents indicate that whether the issuance of a written determination by a court is mandatory has depended on the importance of the issue raised." *Id.* at 9.

Unfortunately, Elliott's Brief In Opposition contains gross distortions of Harkins' position and the cases cited in support of that position. For example, Elliott, by mistakenly asserting that Harkins attacks Rule 43(c) of the Rules of the Supreme Court of Mississippi (Brief In Opposition, *supra* at 1), has failed to perceive that Rule 43(c) may be construed so as not to excuse the Mississippi Supreme Court from issuing a written opinion where the judgment of the trial court never addressed the issue raised on appeal. Also, Elliott has completely misconstrued (Brief in Opposition, *supra* at 10-11) the relevance of Harkins' citation of *Mathews v. Eldridge,* 424 U.S. 319 (1976), which was cited, not because of the relevance of its particular facts, or its specific holding, but because it represents a relatively recent

articulation by this Court of the elements of its flexible due process concept. *See* Petition, *supra* at 7-8.

Harkins has due regard for considerations of federalism. A holding by this Court, addressing the exceptional circumstance where a state court system refuses to issue a written determination addressing a claim of deprivation of due process guaranteed by the Constitution, would not constitute an objectionable interference with state courts.

III. ELLIOTT HAS DISTORTED CERTAIN OF HARKINS' JUDICIAL BIAS ARGUMENTS WHILE FAILING TO CONTRADICT OTHER OF THOSE ARGUMENTS.

Elliott has incorrectly stated that the trial judge's Statement of Bias "is completely neutral as to the predecessors of parties on both sides of the litigation" and that the "remark favored neither side." The trial judge's Statement of Bias was not "completely neutral." The trial judge's remark at issue, the Statement of Bias, formed the basis of a conclusion which clearly favored Elliott's "side of the litigation."

Elliott appparently has failed to perceive that a trial judge's predisposition toward the evidence based on extra-judicial contacts constitutes bias and that such bias may be just as objectionable as an explicitly stated desire by a judge to see one party prevail over another party because of the judge's personal liking of one party or personal disliking of another. *See* Petition, *supra* at 14-15.

It is also important to note that Elliott has made no effort to refute the controlling relevance of the analytical test set forth by this Court in *United States v. Grinnell Corp.*, 384 U.S. 563 (1966) (*see* Petition, *supra* at 14) or of the holding of *Roberts v. Bailar*, 625 F.2d 125 (6th Cir. 1980), which bears such a close factual similarity to the facts of this case (*see* Petition, *supra* at 11-13).

IV. ELLIOTT HAS GROSSLY DISTORTED HARKINS' ASSERTION THAT THE DECISION AT ISSUE IS SO ERRONEOUS AS TO CONSTITUTE ARBITRARY AND CAPRICIOUS ACTION.

Harkins has never contended, as Elliott has suggested (Brief In Opposition, *supra* at 14), that the due process clause guarantees state litigants the benefit of prior state law precedents.

Rather, Harkins has limited its assertion to the well founded proposition that *only* where a state court decision is so clearly erroneous, so completely lacking in rational basis, as to constitute arbitrary and capricious action, is the Constitution's due process guarantee violated. Applying that principle to the facts presented, Harkins has concluded that such arbitrary and capricious action was taken in view of the facts that (i) long standing principles of deed construction consistently applied in Mississippi cases were ignored in this case (ii) by a trial judge who demonstrated improper bias and (iii) no written explanation of why that departure from precedent and that judicial bias was not improper was provided by any court. Elliott has not effectively refuted that conclusion or its underlying bases.[4]

---

[4] With respect to principles of deed construction, Elliott cites two Mississippi cases which are clearly distinguishable. McLaurin v. Royalties, Inc., 231 Miss. 240, 95 So.2d 105 (1957) stated that the after-acquired title doctrine was inapplicable *only* " if the conveyance is merely a quit claim deed and there are no covenants or recitals showing an intention to convey any definite interest or estate." 95 So.2d at 108. The deed at issue here is a Mineral Right and Royalty Transfer Deed which warrants title to an expressed $\frac{9}{32}$'s mineral interest. In Crooker v. Hollingsworth, 210 Miss. 636, 46 So.2d 541 (1950), the court concluded that the after-acquired title doctrine was inapplicable because (i) a third party was the grantee in fact of the after-acquired title; (ii) the party advocating the application of the after-acquired title doctrine was using the doctrine offensively; (iii) the person who sought application of the after-acquired title doctrine had *actual* knowledge of the deficiencies of his grantor's title and (iv) the deed conveyed no specific interest in the property. In this case (i) there were no third party grantees; (ii) Harkins claimed the benefit of the after-acquired title doctrine for defensive purposes; (iii) no actual knowledge by the original grantee of any deficiency in grantor's title has been asserted and (iv) the deed conveyed a *specific estate* ($\frac{9}{32}$'s).

Elliott has missed Harkins' point in citing *American Railway Exp. Co. v. Kentucky*, 273 U.S. 269 (1927) (*see* Brief In Opposition, *supra* at 14-15), which was to invoke the general principle asserted in that case (and also stated in other leading cases, *e.g.*, *Tracy v. Ginzberg*, 205 U.S. 170 (1907)). Surely Elliott does not deny that the "Due Process Clause of the Fourteenth Amendment is not wholly without content for purposes of evaluating the arbitrariness of actions by the State; state . . . [action] may be tested under that Clause against a modest but identifiable standard of minimum rationality."[5]

For these reasons, Elliott's arguments are not persuasive. Accordingly, a writ of certiorari should issue to review the judgment of the Mississippi Supreme Court.

Respectfully submitted,

HARKINS AND COMPANY

WILLIAM F. COCKRELL, JR.
Counsel of Record

MICHAEL G. KUSHNICK
ROSE, SCHMIDT, DIXON & HASLEY
1575 Eye Street, N.W.
Washington, D.C. 20005
(202) 289-8300

EDMUND L. BRUNINI, JR.
JOHN E. MILNER
BRUNINI, GRANTHAM, GROWER & HEWES
1400 First National Bank Bldg.
P.O. Drawer 119
Jackson, Mississippi 39205

KENNETH I. FRANKS
GLENN GATES TAYLOR
HARRY E. NEBLETT, JR.
HEIDELBERG, WOODLIFF & FRANKS
Suite 1030, Capital Towers
Jackson, Mississippi 39201

Counsel for Petitioners

R. FRED HOSEY
HARKINS AND COMPANY
P.O. Box 1940
Alice, Texas 78332
Of Counsel

[5] Watson v. Kenlick Coal Co., 498 F.2d 1183 (6th Cir. 1974), *cert. denied* 422 U.S. 1012, 1018 (1975) (Douglas, J., dissenting).

CERTIFICATE OF SERVICE

I, WILLIAM F. COCKRELL, JR., Counsel of Record for Petitioners herein, and a member of the bar of the Supreme Court of the United States, hereby certify that on the 3rd day of January, 1983, I served copies of the foregoing Reply Brief on the parties by mailing three copies of said document by first class United States mail, in duly addressed envelopes, with postage prepaid, to each of the following persons:

Donald B. Patterson, Esquire
P.O. Box 888
Brookhaven, Mississippi 39601

Armstrong & Hoffman
P.O. Box 190
Hazelhurst, Mississippi 39083

William E. Hathorn, Esquire
P.O. Box 759
Prentiss, Mississippi 39474

S. Wayne Easterling, Esquire
P.O. Box 870
Hattiesburg, Mississippi 39401

Alex A. Alston, Jr., Esquire
519 First National Bank Building
P.O. Drawer 1532
Jackson, Mississippi 39205

M. Ward Bailey, Esquire
24th Floor
Continental Life Building
Fort Worth, Texas 76102

Joe Dale, Esquire
P.O. Box 518
Prentiss, Mississippi 39474

Thomas, Price, Alston, Jones & Davis
519 First National Bank Building
P.O. Drawer 1532
Jackson, Mississippi 39205

M. M. Roberts, Esquire
P.O. Box 870
Hattiesburg, Mississippi 39401

I further certify that all parties required to be served have been served.

William F. Cockrell, Jr.

APPENDIX

APPENDIX A

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

HARKINS AND COMPANY, *Et Al.*,
Petitioners

v.

JAMES W. ELLIOTT, JR., *Et Al.*,
Respondents

AFFIDAVIT IN SUPPORT OF PETITIONERS' REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

SUPREME COURT OF THE UNITED STATES
STATE OF MISSISSIPPI
COUNTY OF HINDS

Glenn Gates Taylor, being first duly sworn, deposes and says:

1. I am Glenn Gates Taylor and have personal knowledge of the facts set forth herein.

2. I am an attorney and counselor at law with the law firm Heidelberg, Woodliff & Franks, Suite 1030 Capital Towers, Jackson, Mississippi 39201, and was one of several counsel representing Petitioners Harkins and Company, *et al* at the trial of James W. Elliott, *et al.* v. Harkins and Company, *et al.* in the Chancery Court of Jefferson Davis County, Mississippi. I was present in open court on December 8, 1980, at the trial of this matter.

3. On December 8, 1980, Honorable J. W. Walker, Chancellor, the trial judge in this matter, made the following statement from the bench ("Statement of Bias"):

> "I knew both B. C. Griffith and Robert Dale, they weren't anybody's fools, they were good businessmen and knowledgeable about the oil business and would not have put something in the instrument without some reason, unless it meant something."

4. This Statement of Bias was made from the bench only moments before the trial judge rendered his decision and was not rendered at a break in the proceedings or a recess in the trial. This Statement of Bias and the decision rendered by the trial judge occurred, for all practical purposes, simultaneously without opportunity for objection on the part of any counsel in attendance at trial.

s/s GLENN GATES TAYLOR

Glenn Gates Taylor

SWORN TO AND SUBSCRIBED BEFORE ME this the 27th day of December, 1982.

s/s DIANNE GARVIN

Notary Public

My Commission Expires: June 16, 1985
(Seal Affixed)